



TEST SECURITY AGREEMENT (TSA)

Spanish Language Proficiency Program

This Test Security Agreement ("Agreement") is by and between Cooperative Personnel Services, dba CPS Human Resource Services, a California joint powers authority ("CPS"), with offices at 241 Lathrop Way Sacramento, CA 95815 and _____ ("Agency," hereafter referred to as "Client").

SECTION I - PURPOSE OF AGREEMENT

This agreement defines CPS' test use policies and procedures for Bilingual tests. It also explains CPS test security standards designed to protect the mutual interests of all Clients that use the test materials, as well as the interests of applicants who take such tests. In order that no person may gain special advantage by having improper access to the material, CPS requires that all users sign this agreement and fulfill its terms.

The term of this agreement shall be from July 1, 2009 through June 30, 2010.

SECTION II – CPS POLICIES AND PROCEDURES

A. Ordering Bilingual Proficiency Tests

1. **Scheduling of Examinations.** The Client desiring exam preparation services shall notify CPS not less than two weeks in advance of the test date to allow time for scheduling, preparation, and shipping. Expedited service will involve additional charges. Client shall direct all assessment service requests to:

CPS Human Resource Services
Attn: SLPP
241 Lathrop Way
Sacramento, CA 95815
916-471-3584
2. **Client Notification to CPS of Number of Candidates.** Not less than two weeks prior to the test date, Client shall notify CPS of the total number of candidates to be tested. Client shall rent one test booklet per candidate to be tested.
3. **Transmittal of Test Materials.** CPS shall provide Client with sufficient test booklets; instructions for administering the test; and such other material as CPS may deem necessary.

4. **Client Administration of Test and Return of Test Materials.** Client shall administer the test in accordance with instructions provided by CPS and, immediately following the test, shall return all used and unused test booklets, instructions, answer sheets, and any other materials furnished by CPS.
5. **Re-Use of Test Materials.** Client shall not reuse the tests on the Test Date or on any other date but shall return Test Materials to CPS immediately after the Test Date, pursuant to paragraph II.A(4) above, whether or not the test was administered.
6. **Scoring of Tests.** CPS will provide scoring turnaround within three (3) working days of receipt of CPS answer sheets. Scoring is sent out by First Class mail. Clients may provide their own envelope and air bill if they require their results more rapidly. CPS also provides faxing service of scoring at a cost of \$25.00 per fax.
7. **Test Materials Inspection.** NO CANDIDATE INSPECTION SHALL BE ALLOWED OF STANDARDIZED TEST MATERIALS.
8. **Answer Sheet(s) Hand Scoring.** CPS offers hand scoring of a candidate's answer sheet(s), upon request by Client, within a 14-calendar-day period immediately following the notification to the candidate of test results. See Exhibit C for the charge for this service.
9. **Examination Charges.** In consideration of CPS' performance of the testing services set forth in Exhibit C of this Agreement, Client agrees to pay CPS in accordance with the "Written and Oral Test Price List" in effect at the time of the rental arrangements. Client acknowledges and understands that the prices set forth in Exhibit C are only effective as of the date shown on Exhibit C and are subject to change. CPS shall bill Client at the billing address provided in Exhibit B, attached hereto. All charges are due within 30 days of invoice date.
10. **Canceled or Postponed Tests.** Client shall be billed for any work done on a canceled or postponed test up to the time CPS is notified of such cancellation or postponement. Minimum cancellation charge once order is shipped is \$200.00.

C. Client Responsibilities and Indemnification

1. The Client shall perform all parts of the testing process, which have not specifically been requested of and agreed to by CPS.
2. Client shall assume responsibility for the conformity of the testing process to any applicable laws, rules or ordinances, and for the test as a whole. Under the federal Uniform Guidelines on Employee Selection Procedures, the Client as test user is responsible for the results of the selection process, and Client understands and acknowledges that it must be prepared to demonstrate that the process is valid and meets other testing standards if it adversely affects groups protected by fair employment laws.
3. Client shall indemnify, defend and hold harmless CPS and CPS' officers and employees from and against any and all claims, actions, losses, costs and liabilities based on any claims by third parties relating to or arising from a test or the administration of a test.

SECTION III - SECURITY OF TEST MATERIALS

- A. Ownership of CPS Tests.** Client understands and acknowledges that CPS owns all rights, title and interest, including copyrights, in all CPS Tests. Thus, all CPS Tests that are provided under this agreement are the property of CPS and shall remain the property of CPS, even while in the custody of Client.
- B. Test Security.** Client understands and acknowledges that the confidentiality of all Test Materials that CPS supplies is crucial to the continued usefulness of such Test Materials. Therefore, Client shall be responsible for the security of all Test Materials supplied for a test administration. Client shall hold and store the Test Materials in a manner that will prevent unauthorized persons from having access to them. In addition, **Client shall not reproduce test booklets or test questions under any circumstances.**
- C. Legal Proceedings Involving Test Materials.** If any Test Materials obtained from CPS should become involved in legal proceedings by a court or other body vested with legal authority, CPS and/or Client will take appropriate measures to safeguard the confidentiality of the Test Materials, including answer sheets, such as by motion or protective order.

SECTION IV – RESPONSIBILITY FOR COMPLIANCE WITH AGREEMENT

- A. Test Administrators.** Client represents and warrants that it shall ensure that each person who orders and/or receives Test Materials and/or supervises Test Administrations on Client's behalf ("Test Administrator") will do so in accordance with the terms of this Agreement. All Test Administrators and the representative of Client who signs this Agreement on Client's behalf must sign the "Test Administrator Acknowledgement" set forth in Exhibit A ("Acknowledgment"). During the term of this initial Acknowledgement CPS is not obligated to accept orders or to release Test Materials to persons for whom it has not received a fully signed Acknowledgement.
- B. Client's Responsibility for Compliance with Agreement.** Client represents and warrants that it shall ensure that all persons that handle Test Materials in any capacity, including both Test Administrators and proctors that simply assist with Test Administration, shall do so in compliance with this Agreement.

SECTION V – TERM AND TERMINATION OF AGREEMENT

- A. Term.** The term of this Agreement is from July 1, 2009 – June 30, 2010.
- B. Immediate Termination upon Material Breach.** Each party may terminate this Agreement immediately upon any material breach by the other party. For purposes of this Agreement, but without limiting the meaning of material breach, **any** breach of the test security provisions of Section III, however minor, shall be considered a material breach. Client understands and acknowledges that immediate termination by CPS may result in the withholding or recall of Test Materials.
- C. Termination without Cause.** CPS and Client may terminate the Agreement without cause upon thirty days written notice to the other party.
- D. Return of Test Materials.** Upon termination of the Agreement, Client shall **immediately** return to CPS any Test Materials that it possesses.

SECTION VI – EQUITABLE RELIEF AND LIQUIDATED DAMAGES

- A. Equitable Relief.** Client acknowledges that breach of this Agreement will result in irreparable harm to CPS for which damages would be an inadequate remedy and, therefore, in the event of a breach, in addition to its rights and remedies otherwise available by law, CPS shall be entitled to equitable relief, including injunction.
- B. Liquidated Damages.** Client shall reimburse CPS, according to Exhibit C, attached hereto, for a portion or all of the replacement costs for Test Materials, which, while in the custody of the Client, were lost or were compromised, such that in CPS' sole discretion the value of the testing materials was destroyed.

SECTION VII - MISCELLANEOUS

- A. Notices.** Any notice to the parties required or permitted under this Agreement shall be given in writing. Notice shall be deemed given at the following times: (a) on the date of service if served personally on the party to whom notice is to be given; (b) on the first day after transmission if transmitted by telex or electronic facsimile; (c) on the second day after deposit if deposited with an overnight express courier service; or (d) on the second day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, addressed to the party at the party's principal place of business.
- B. Jurisdiction, Venue and Governing Law.** The validity, interpretation and performance of this Agreement and the parties' rights and liabilities under this Agreement shall be controlled by and construed under the laws of the State of California, excluding its conflicts of laws rules. The exclusive jurisdiction and venue of any legal proceedings arising out of this Agreement shall be the state or federal courts located in Sacramento, California. Each party agrees not to request the Sacramento-based federal court to transfer any litigation to a federal court located elsewhere.
- C. Attorneys' Fees.** If any legal action or arbitration or other proceeding is brought to enforce or construe the term of this Agreement or because of an alleged dispute, breach or default in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action, arbitration or proceeding in addition to any other relief to which it may be entitled.
- D. Waiver.** The failure of any party at any time or times to require performance of any provisions of this Agreement shall in no manner affect its right to enforce such provision at a later time. Nor shall the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself. No waiver shall be enforceable unless made in writing and signed by the party granting the waiver.
- E. Entire Agreement; Modifications.** This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all other agreements, representations and warranties. All modifications and supplements to this Agreement must be in writing and signed by both parties.
- F. Counterparts; Facsimile Signature.** This Agreement may be executed in any number of counterparts. If this Agreement or any counterpart is signed and then faxed, the faxed copy bearing the signature shall be as good as the original, wet-ink signed copy for all intents and purposes.

- G. Authority to Sign.** The person signing this Agreement on behalf of the Client (the "Principal Signer") represents that he or she is the head of the agency and duly authorized to sign this Agreement and to bind the Client.

PRINCIPAL SIGNER (Head of the agency, i.e., HR Director, Fire Chief, Police Chief, etc.)			
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Agency Name			
<hr/>			
Shipping Address (No P.O Boxes)	City	State	Zip Code
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Mailing Address	City	State	Zip Code
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Printed Name of Principal Signer		Title	
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Email Address			
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Phone Number		Fax Number	
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Principal Signer Signature		Date	
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Exhibit A

TEST ADMINISTRATOR ACKNOWLEDGEMENT

By signing below, I represent that I will order and handle CPS Test Materials in accordance with the terms of the CPS Test Security Agreement.

<u>Name and Title (Print)</u>	<u>Signature</u>	<u>Email</u>

Principal Signer's Acknowledgement of Authority

By signing below, I represent that the above-named person(s) is (are) authorized to handle CPS Tests on Client's behalf and shall handle the CPS Test Materials in accordance with the terms of the CPS Test Security Agreement currently in effect.

Name and Title (Print)

Signature

Agency

Date

Exhibit B

CLIENT BILLING INFORMATION

This must be completed in order for TSA to be processed.

Agency Name

Mailing Address

City

State

Zip Code

Billing Contact Name

Title

Email Address

Phone Number

Fax Number

Please notify CPS of billing information changes at:

CPS Human Resource Services
241 Lathrop Way
Sacramento, CA 95815
916-471-3584

Exhibit C

Spanish Language Proficiency Program Test Rental Rates

CPS Rates (Effective July 1, 2009)

Note: Prices are subject to change

	Written Test	Oral Test
Base Fee	\$295.00	\$295.00
**Per Booklet Fee	\$9.00	N/A
***Per Tape Scoring Fee	N/A	\$120.00
Expedited Shipping	*20%	*20%

*Orders placed less than two weeks prior to the exam date will incur expedited shipping charges.

**Per Booklet Fee will be charged for number of books ordered.

***Billed for the number rated.

Special Services

Faxing/Emailing Test Results	Available at no additional charge
Hand Scoring	\$30.00
Proctoring Services	Call for details/quote
SLPP Extended Use Program	Call for details

Lost or Compromised Test Pricing

For each lost **written** test, there will be a base charge of \$10,000. For each additional copy (test) of the same test that is lost, there will be a \$75 charge with a maximum total charge of \$20,000.

For each lost **oral** test, there will be a base charge of \$15,000. For each additional copy (test) of the same test that is lost, there will be a \$75 charge with a maximum total charge of \$20,000.

SLPP Contact Information:

CPS Human Resource Services
Attn: SLPP
241 Lathrop Way, Sacramento, CA 95815

Telephone: 916.471.3584
Fax: 916.561.7230 E-mail: SLPP@cps.ca.gov